

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FRED REEVES,

Plaintiff,

v.

Case No. 06-10326

DEBORAH WALLINGTON, et al,

HONORABLE AVERN COHN

Defendants.

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**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
AND  
GRANTING PLAINTIFF'S MOTION TO STRIKE OR FOR SUMMARY JUDGMENT AS  
TO DEFENDANTS' AFFIRMATIVE DEFENSES**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff Fred Reeves, a state inmate, sued several defendants claiming that they were deliberately indifferent to his serious medical needs. The matter was referred to a magistrate judge for all pretrial proceedings. Plaintiff filed a motion to strike or, in the alternative, for summary judgment regarding three of defendants' affirmative defenses - (1) failure to state a claim, (2) failure to exhaust administrative remedies, and (3) failure to mitigate damages.<sup>1</sup> On November 6, 2008, The magistrate judge issued a report and recommendation (MJRR) recommending that (1) plaintiff's motion to strike be granted

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<sup>1</sup>Defendants are represented by the Office of the Attorney General for the State of Michigan. Defendants did not file a response to the motion, despite requesting and being granted an extension of time in which to file a response. This would seem to indicate that the defenses were frivolous.

as to defendants' affirmative defense of failure to state a claim and (2) that plaintiff's motion for summary judgment be granted on defendants' affirmative defenses of failure to mitigate and failure to exhaust administrative remedies.

II.

Neither party has objected to the MJRR. Accordingly, the findings and conclusions of the magistrate judge in the MJRR filed November 6, 2008 are adopted as the findings and conclusions of the Court. Accordingly, plaintiff's motion to strike is GRANTED as to defendants' affirmative defense of failure to state a claim and plaintiff's motion for summary judgment is GRANTED as to defendants' affirmative defenses of failure to mitigate and failure to exhaust administrative remedies.

SO ORDERED.

s/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: November 24, 2008

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, November 24, 2008, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160